

ARTICLE 6

REAL PROPERTY TRANSFER TAX

Section	Subject Matter
8-6.01	TITLE AND PURPOSE
8-6.05	IMPOSITION OF TAX
8-6.10	LIABILITY FOR PAYMENT
8-6.15	EXEMPTION: WRITTEN SECURITY INSTRUMENT
8-6.20	EXEMPTION: GOVERNMENTAL ENTITY ACQUIRING TITLE
8-6.25	PERSONS EXEMPT FROM TAX
8-6.30	EXEMPTION: BANKRUPTCY PROCEEDINGS
8-6.33	EXEMPTION: INSTRUMENTS PURSUANT TO S.E.C. ORDER
8-6.35	EXEMPTION: PARTNERSHIPS
8-6.40	INSTRUMENTS IN LIEU OF FORECLOSURE
8-6.45	INSTRUMENTS DIVIDING COMMUNITY PROPERTY
8-6.50	DEED, INSTRUMENT, OR OTHER WRITING FOR CONVEYANCE OF REALTY BY STATE OR POLITICAL SUBDIVISION OR AGENCY WITH AGREEMENT FOR PURCHASER TO RECONVEY
8-6.55	DEED, INSTRUMENT, OR OTHER WRITING FOR CONVEYANCE OF REALTY BY STATE, POLITICAL SUBDIVISION, OR AGENCY OF REALTY FINANCED BY OBLIGATIONS ISSUED BY NONPROFIT CORPORATION
8-6.57	EXEMPTION: PROPERTY EXCHANGE
8-6.59	EXEMPTIONS FOR LACK OF CONSIDERATION

8-6.60	ADMINISTRATION OF TAX
8-6.65	DUE DATES; DELINQUENCY; PENALTIES; INTEREST
8-6.70	DECLARATION REQUIRED
8-6.75	DETERMINATION OF DEFICIENCY
8-6.80	NOTICE OF DETERMINATION
8-6.85	MANNER OF GIVING NOTICE
8-6.90	PETITION FOR RECONSIDERATION
8-6.95	RECONSIDERATION
8-6.100	MODIFICATION OF DETERMINED AMOUNT
8-6.105	FINALITY OF DETERMINATION
8-6.110	TAX DEEMED DEBT TO CITY
8-6.115	REFUNDS
8-6.120	COLLECTION OF DELINQUENT CHARGES AND FEES

ARTICLE 6

REAL PROPERTY TRANSFER TAX

SEC. 8-6.01 TITLE AND PURPOSE. This article may be cited as the 'City of Hayward Real Property Transfer Tax Ordinance.' The tax imposed under this article is solely for the purpose of raising revenue for deposit in the general fund for the usual and current expenses of the City. This article is not enacted for regulatory purposes. This article is adopted pursuant to the powers vested in the City by the Charter of the City of Hayward.

SEC. 8-6.05 IMPOSITION OF TAX. A tax is hereby imposed on each transfer, by deed, instrument, or writing, by which any lands, tenements, or other real property located in the City are sold, granted, assigned, transferred, or otherwise conveyed to, or vested in, a purchaser or purchasers thereof, or any other person or persons at or by the direction of said purchaser or purchasers, when the value of the consideration exceeds \$100, said tax to be at the rate of \$4.50 for each \$1,000 or fractional part of \$1,000 of the value of the consideration.

As used herein, 'value of the consideration' shall mean the total consideration, paid or delivered, or contracted to be paid or delivered, in return for the transfer of real property, including the amount of any indebtedness, existing immediately prior to the transfer which is secured by a lien, deed of trust or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust, or encumbrance after said transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust, or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of the transfer. Value of the consideration also includes the amount of any special assessment levied or imposed upon the property by a public body, district, or agency, where said special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type, other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after said transfer, shall not be included in determining the value of the consideration. If the value of the consideration cannot be definitely determined, or is left open to be fixed by future contingencies, value of the consideration shall be deemed to mean the fair market value of the property at the time of transfer after deducting the amount of any lien or encumbrance, if any of a type which would be excluded in determining the value of the consideration pursuant to above provisions of this section.

SEC. 8-6.10 LIABILITY FOR PAYMENT. Any tax imposed pursuant to section 8-6.05 hereof shall be paid by any person who makes, signs, or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed, or issued. Except as provided in section 8-6.25, the tax imposed by this article is a joint and several obligation of the aforementioned persons.

SEC. 8-6.15 EXEMPTION: WRITTEN SECURITY INSTRUMENT. Any tax imposed pursuant to this article shall not apply to any instrument in writing given to secure a debt.

SEC. 8-6.20 EXEMPTION: GOVERNMENTAL ENTITY ACQUIRING TITLE. Any deed, instrument, or writing to which the United States or agency or instrumentality thereof, any state or territory or political subdivision thereof, is a party, shall be exempt from any tax

imposed pursuant to this article when the exempt entity of government is acquiring title or an interest.

SEC. 8-6.25 PERSONS EXEMPT FROM TAX. The United States or any agency or instrumentality thereof, any state or territory or political subdivision thereof, or the District of Columbia shall not be liable for any tax imposed pursuant to this article with respect to any deed, instrument, or writing to which it is a party, but the tax may be collected by assessment from any other party liable therefor.

SEC. 8-6.30 EXEMPTION: BANKRUPTCY PROCEEDINGS. Any tax imposed pursuant to this article shall not apply to the making, delivering, or filing of conveyances to make effective any plan of reorganization or adjustment confirmed under the federal Bankruptcy Act, as amended, if the making, delivery, or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval, or change and is expressly provided for therein.

SEC. 8-6.33 EXEMPTION: INSTRUMENTS PURSUANT TO S.E.C. ORDER. Any tax imposed pursuant to this article shall not apply to the making or delivery of conveyances to make effective any order of the Securities Exchange Commission, but only if:

- a. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of the Public Utility Holding Company Act of 1935;
- b. Such order specifies the property which is ordered to be conveyed; and
- c. Such conveyance is made in obedience to such order.

SEC. 8-6.35 EXEMPTION: PARTNERSHIPS.

- a. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this article by reason of any transfer of an interest in a partnership if:
 - (1) Such partnership (or another partnership) is considered a continuing partnership within the meaning of section 708 of the Internal Revenue Code; and
 - (2) Such continuing partnership continues to hold the realty concerned.
- b. If there is a termination of any partnership within the meaning of the Internal Revenue Code for purposes of this article, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.
- c. Not more than one tax shall be imposed pursuant to this article by reason of a termination described in subsection (b) of this section, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

SEC. 8-6.40 INSTRUMENTS IN LIEU OF FORECLOSURE. Any tax imposed

pursuant to this article shall not apply with respect to any transfer to a beneficiary or mortgagee which is taken in lieu of foreclosure. Such tax shall apply to the extent that the value of the consideration exceeds the unpaid debt including accrued interest and cost of foreclosure. The consideration, unpaid debt amount, and identification of grantee as beneficiary or mortgagee shall be noted on the instrument or stated in an affidavit or declaration under penalty of perjury for tax purposes.

SEC. 8-6.45 INSTRUMENTS DIVIDING COMMUNITY PROPERTY.

- a. Any tax imposed pursuant to this article shall not apply with respect to any deed, instrument, or other writing which purports to transfer, divide, or allocate community, quasi-community, or quasi-marital property assets between spouses for the purposes of effecting a division of community, quasi-community, or quasi-marital property which is required by a judgment decreeing a dissolution of the marriage or legal separation, by a judgment of nullity, or by any other judgment or order rendered pursuant to Part 5 (commencing with section 4000) of Division 4 of the Civil Code, or by a written agreement between the spouses, executed in contemplation of any such judgment or order, whether or not the written agreement is incorporated as part of any of those judgments or orders.
- b. In order to qualify for the exemption provided in subsection (a), the deed, instrument, or other writing shall include a written recital, signed by either spouse under penalty of perjury, stating that the deed, instrument, or other writing is entitled to the exemption.

SEC. 8-6.50 DEED, INSTRUMENT, OR OTHER WRITING FOR CONVEYANCE OF REALTY BY STATE OR POLITICAL SUBDIVISION OR AGENCY WITH AGREEMENT FOR PURCHASER TO RECONVEY. Any tax imposed pursuant to this article shall not apply with respect to any deed, instrument, or other writing by which realty is conveyed by the State of California, any political subdivision thereof, or agency or instrumentality of either thereof, pursuant to an agreement whereby the purchaser agrees to immediately reconvey the realty to the exempt agency.

SEC. 8-6.55 DEED, INSTRUMENT, OR OTHER WRITING FOR CONVEYANCE OF REALTY BY STATE, POLITICAL SUBDIVISION, OR AGENCY OF REALTY FINANCED BY OBLIGATIONS ISSUED BY NONPROFIT CORPORATION. Any tax imposed pursuant to this article shall not apply with respect to any deed, instrument, or other writing by which realty is conveyed by the State of California, any political subdivision thereof, or agency or instrumentality of either thereof, conveys to a nonprofit corporation realty the acquisition, construction, or improvement of which was financed or refinanced by obligations issued by the nonprofit corporation on behalf of a government unit, within the meaning of section 1.103-1(b) of Title 26 of the Code of Federal Regulations.

SEC. 8-6.57 EXEMPTION: PROPERTY EXCHANGE. The tax imposed pursuant to this article shall apply to the transfer of only one property in the instance of an exchange pursuant to section 1031 of the Internal Revenue Code of like kind properties held for productive use in a trade or business or for an investment. For purposes of this section, the exchange of properties must be completed within 180 days following the date on which the taxpayer transfers and pays the tax on one of the properties relinquished in the exchange.

SEC. 8-6.59 EXEMPTIONS FOR LACK OF CONSIDERATION. Any tax imposed

pursuant to this article shall not apply to transfers, conveyances, leases, or subleases without consideration (exclusive of the value of any lien or encumbrance remaining thereon) which:

- a. Confirm or correct a deed previously recorded or filed.
- b. Effectuate a gift or consideration of 'love and affection.'
- c. Partition property.
- d. Effectuate a will or intestate succession.
- e. Effectuate the right of survivorship of a joint tenant.

SEC. 8-6.60 ADMINISTRATION OF TAX. The Finance Director of the City or his or her designee (hereinafter in this article referred to as "Tax Collector") shall collect the tax imposed under this article and shall otherwise administer this article. The Tax Collector may make such rules and regulations, not inconsistent with the article, as he or she may deem reasonably necessary or desirable to administer this article. In the administration of this article, the Tax Collector shall interpret its provisions consistently with those Documentary Stamp Tax Regulations adopted by the Internal Revenue Service of the United States Treasury Department which relate to the tax on conveyances, except that for purposes of this article:

- a. The term 'realty' as used in said regulations, shall be deemed to mean 'real property' as such term is defined by and under the laws of the state;
- b. Those provisions of said regulations providing for deduction of the value of any lien or encumbrance existing before the sale and not removed thereby shall not apply;
- c. Those provisions of said regulations relating to the rate of the tax shall not apply;
- d. Those provisions of said regulations which conflict with the provisions of this article shall not apply.

SEC. 8-6.65 DUE DATES; DELINQUENCY; PENALTIES; INTEREST. The tax imposed under this article is due and payable at the time that the deed, instrument, or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid at the time of recordation thereof.

In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent of the amount of tax due shall accrue. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. An additional penalty of ten percent (10%) shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency.

Interest shall accrue at the rate of one percent per month or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become a part of the tax.

SEC. 8-6.70 DECLARATION REQUIRED. The tax imposed by this article shall be paid to the Tax Collector by the persons referred to in section 8-6.70. Payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by his

or her agent under penalty of perjury. The declaration shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deed of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also includes all special assessments on the property which the purchaser or transferee agrees to pay or which remain a lien on the property at the time of transfer. The declaration shall identify the deed, instrument, or writing effecting the transfer for which the tax is being paid. The Tax Collector may require delivery to him or her of a copy of such deed, instrument, or writing whenever deemed to be reasonably necessary to adequately identify such writing or to administer the provisions of this article. The Tax Collector may rely on the declaration as to the amount of the tax due, provided he or she has no reason to believe that the full amount of the tax due is not shown on the declaration.

Whenever the Tax Collector has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, he or she may, by notice served upon any person liable for the tax, require such person to furnish a true copy of such person's records relevant to the value of the consideration or fair market value of the property transferred. Such notice may be served at any time within three years after recordation of the deed, instrument, or writing which transfers such property.

If the declaration required by section 8-6.70 is not submitted, the Tax Collector may make an estimate of the value of the consideration for the property conveyed and determine the amount of tax to be paid on the basis of any information in his or her possession or that may come into his or her possession.

SEC. 8-6.75 DETERMINATION OF DEFICIENCY. If on the basis of such information as the Tax Collector receives pursuant to section 8-6.70 or on the basis of such other relevant information that comes into his or her possession, the Tax Collector determines that the amount of tax due as set forth in the declaration, or as paid, is insufficient, the Tax Collector may recompute the tax due on the basis of such information.

One or more deficiency determinations may be made of the amount due with respect to any transfer.

SEC. 8-6.80 NOTICE OF DETERMINATION. The Tax Collector shall give notice to all persons liable for payment of the tax imposed under this article of his or her determination made under section 8-6.75. Such notice shall be given within three years after the recordation of the deed, instrument, or writing effecting the transfer on which the tax deficiency determination was made.

SEC. 8-6.85 MANNER OF GIVING NOTICE. Any notice required to be given by the Tax Collector under this article may be served personally or by mail; if by mail, service shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid addressed to the person on whom it is to be served at his or her address as it appears in the records of the City or as ascertained by the Tax Collector. The service is complete at the time of the deposit of the notice in the United States mail, without extension of time for any reason.

SEC. 8-6.90 PETITION FOR RECONSIDERATION. Any person against whom a determination is made under this article or any person directly interested may petition the Tax Collector for reconsideration of the determination within sixty days after service upon the person of notice thereof. If a petition for reconsideration is not filed within the sixty day period, the determination becomes final at the expiration of the period.

SEC. 8-6.95 RECONSIDERATION. If a petition for reconsideration of the determination is filed within the sixty day period, the Tax Collector shall reconsider the determination, and the petitioner may submit oral and written information the petitioner feels is pertinent. The petitioner shall be given ten days' notice of the time and place for the submittal of such information. The Tax Collector may designate one or more deputies for the purpose of conducting reconsideration.

SEC. 8-6.100 MODIFICATION OF DETERMINED AMOUNT. The Tax Collector may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Collector at or before the date set for presentation of petitioner's information.

SEC. 8-6.105 FINALITY OF DETERMINATION. The order or decision of the Tax Collector upon a petition for reconsideration becomes final 30 days after service upon the petitioner of notice thereof.

SEC. 8-6.110 TAX DEEMED DEBT TO CITY. The amount of any tax, penalty, and interest imposed under the provisions of this article shall be deemed a debt to the City. Any person owing money to the City under the provisions of this article shall be liable to an action brought in the name of the City for the recovery of such amount.

SEC. 8-6.115 REFUNDS. Whenever the amount of any tax, penalty, or interest has been overpaid, or paid more than once, or has been erroneously collected or received by the City under this article, it may be refunded as provided in this section, provided a written claim therefor, stating under penalty of perjury the specific grounds under which the claim is founded, is filed with the Tax Collector within three years of the date of payment. The claim shall be on a form furnished by the Tax Collector. The Tax Collector may make such refund as he or she is satisfied that the claimant is entitled to under the provisions of this section.

SEC. 8-6.120 COLLECTION OF DELINQUENT CHARGES AND FEES. Delinquent taxes (including penalties and interest) shall be made a lien upon the real property transferred and such lien shall continue until the taxes thereon are fully paid. During July of each year, the Tax Collector shall submit a report of delinquent taxes to the City Council. A time, date, and place for hearing of the report and any objections or protests thereto shall be fixed by the City Clerk. Not less than ten days prior to the date of such hearing, the Tax Collector shall mail written notice thereof to the owner of each of the properties affected thereby, using for this purpose the names and addresses which appear on the last equalized tax assessment roll.

- a. At said hearing the City Council shall hear any objections or protests of owners of property liable to be assessed for delinquent taxes. The City Council may make such revision or corrections to the report as it deems just, after which the report shall be confirmed by resolution. The delinquent taxes set forth in the report as confirmed shall constitute special assessments against the respective property and are a lien on the property for the amounts of such delinquent taxes.
- b. Prior to August 10, a certified copy of the confirmed report shall be filed with the County Auditor, who shall enter each assessment on the tax roll against the respective premises. Said assessment shall be collected at the same time in the same manner as ordinary municipal ad valorem taxes and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection and enforcement of municipal ad valorem

property taxes shall be applicable to such assessments.

- c. The lien created attaches upon recordation of a certified copy of the confirmed report in the office of the County Recorder and shall continue until the charges and fees are fully paid.